

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 02-1181 WJ/DJS

FAIR PLAZA ASSOCIATES;
JOHN J. McMULLAN, in his individual
capacity and d/b/a JOHN J. McMULLAN,
REALTOR; BESSIE GUTIERREZ;
NANCY FOWLER; and FAYE CROW,

Defendants.

MEMORANDUM OPINION AND ORDER DENYING
MOTION TO INTERVENE

THIS MATTER comes before the Court pursuant to West American Insurance Company and Ohio Casualty Insurance Company's Motion to Intervene [Docket No. 10]. Plaintiffs-in-Intervention are Defendants' insurers. Plaintiffs-in-Intervention seek permissive intervention under Fed. R. Civ. P. 24(b). Defendants, Plaintiffs-in-Intervention's insureds, filed a Response in opposition to the motion.

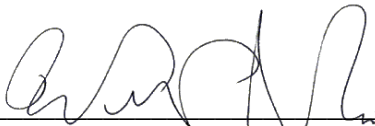
Rule 24(b) permits intervention when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, a court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b).

As the Plaintiffs-in Intervention correctly point out in their Reply brief, Defendants do not contest that there is a question of law or fact in common between the main action and Plaintiffs-

in-Intervention's claims or defenses. Rather, Defendants assert that permissive intervention is not appropriate in this instance because of the antagonism that would necessarily exist between the insured and the insurer.

I will deny permissive intervention in this case because the interests of the insurers are unquestionably antagonistic toward the Defendants and will prejudice the adjudication of the Defendants' rights by allowing the Plaintiffs-in-Intervention to interfere with or control the defense. See Nieto v. Kapoor, 61 F.Supp.2d 1177 (D.N.M. 1999).

IT IS THEREFORE ORDERED that West American Insurance Company and Ohio Casualty Insurance Company's Motion to Intervene [Docket No. 10] is hereby DENIED.


UNITED STATES DISTRICT JUDGE